

APPENDIX E



Federal and State Legal Mandates

The principal Idaho Code mandates for the ITD are contained in Title 40. Other Idaho Laws relevant to those governmental jurisdictions with road responsibility are referenced in the Local Road Jurisdiction Manual, which is available through the Idaho Technology Transfer Center, ITD. These laws include responsibilities assigned to ITD for aeronautics, public transportation, rail, and water ports.

ITD was established under Section 40-501, Idaho Code, in 1974 for the purposes of carrying out Section 20, Article IV of the Constitution of the State of Idaho. It is an executive department of state government.



The department has as its head the Idaho Transportation Board, established by Chapter 3, Title 40, Idaho Code. The powers and duties of the Board are defined in Sections 40-309, 40-310, 40-311, 40-312, 40-313, 40-314, 40-316, and 40-317.

The principal Idaho Code mandates for local governments having highway responsibilities are contained in Title 40, Chapter 5, Idaho Code. Other Idaho Laws relevant to these governmental bodies are included in the Local Road Jurisdiction Manual.

The duties and powers of county commissioners regarding highways or public rights of way are defined in Chapter 6, Title 40, Idaho Code. The counties have responsibility for those highways or public rights-of-way which are not designated as part of the State Highway System, excepting as delegated to highway districts and cities. Under Section 40-601, Idaho Code, the County Commissioners are charged with the responsibility to issue an order and enter it into the records for "...any defined portion of contiguous territory, located wholly within the county, for the construction, improvement or repair of highways pursuant to the provisions of law, each defined portion of contiguous territory is recognized as a legal taxing district and body politic of this state and as a highway district for highway purposes." Under Section 40-603, Idaho Code, the commissioners of each county shall recommend highways for the county highway system to the Idaho Transportation Board each year for approval.

Chapter 13, Idaho Code, defines the organization, powers and duties, liabilities and judgments, and funding of Highway Districts. Under Section 40-1334, every city is designated a Highway District, unless it is included within the boundaries of a designated Highway District. In the latter case, the provisions of Section 40-1334, Idaho Code, are not applicable, but the city is "...constituted a separate division of the district" and the city council has "...powers and duties as provided by this

chapter upon the commissioners of a highway district."

Chapter 14, Idaho Code, defines the organization, powers and duties, liabilities and judgments, and funding of Single County-Wide Highway Districts. Section 40-1406, Idaho Code, abolishes the powers of cities in the county in order to carry out the single county-wide jurisdictional requirements of the statute.

As noted above, the Idaho statutes clearly define the duties and powers, boundaries, taxing authority and other governmental responsibilities of state and local jurisdictions having transportation authority. By these statutes, each governmental unit operates independently of the other, but cooperates as necessary to carry out their responsibilities under state and federal laws.

In addition to state laws, the state and local governments are required to comply with federal laws and regulations for those programs that utilize federal funds. These programs are primarily federal programs carried out under Title 23 and 49, US Code of Federal Regulations. Other applicable statutes, executive orders and regulations are contained in the following:

1. National Environmental Policy Act (1969) - 42 USC § 4321 *et seq.*; 40 CFR § 1500 *et seq.* (CEQ); DOT Order 5610.1C;
2. § 4(f) (1966) - 49 USC § 303; 23 US 138; 23 CFR § 771.135;
3. National Historic Preservation Act (NHPC) - 16 USC § 470; 36 CFR § 800 *et seq.* (NHPC);
4. Archaeological and Historic Preservation Act - 16 USC § 469 *et seq.*; 36 CFR § 66;
5. Clean Air Act - 42 USC § 7506(c), § 7511a; EPA/DOT Conformity Guidance 6/7/91; Proposed Conformity Reg., 58 Fed. Reg. 3768 (1/11/93);
6. Clean Water Act (1972, 1977, 1987) - 33 USC § 1251 *et seq.*; 33 USC § 1342 (402 Permit); 33 USC § 1344 (404 Permit); 33 CFR § 230 *et seq.* (Corps); 40 CFR § 131 (EPA);
7. Wetlands Executive Order # 11990 (1977) - DOT Order 5660.1A; 23 CFR § 777;
8. Noise Standards - 23 USC § 109(I); 23 CFR § 772;
9. Endangered Species Act (1973) - 16 USC § 1531 *et seq.*; 50 CFR § 402;
10. Wild and Scenic Rivers Act - 16 USC § 1271 *et seq.*; 36 CFR § 297 (Forest Service);
11. Federal Transit Act (1992) (49 U.S.C. app. § 1601 *et seq.*).